



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Satellite Services, Inc.--Reconsideration

File: B-252009.2

Date: March 24, 1993

Anthony J.D. Contrì, Esq., Civerolo, Wolf, Gralow & Hill, for the protester. Jacqueline Maeder, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency has no obligation to exercise an option in an existing contract awarded under solicitation issued pursuant to Office of Management and Budget Circular No. A-76 and need not justify such decision with a cost comparison.

DECISION

Satellite Services, Inc. requests reconsideration of our January 19, 1993, dismissal of its protest under invitation for bids No. DTCG40-93-B-30012, issued by the U.S. Coast Guard, Department of Transportation. Satellite, the incumbent contractor, argued that no award should be made under the solicitation but that the required services should be obtained from Satellite under an option in its current contract. We dismissed the protest because contract options are exercised solely at the discretion of the government, and a contractor cannot compel an agency to exercise an option in its contract. California Shorthand Reporting, B-236680, Dec. 22, 1989, 89-2 CPD ¶ 584.

We affirm the dismissal.

In its protest to our Office, Satellite alleged that, because its contract with the agency was awarded under a solicitation issued pursuant to Office of Management and Budget (OMB) Circular No. A-76¹, the agency must conduct

¹OMB Circular No. A-76 describes the executive branch's policy on the operation of commercial activities that are incidental to the performance of governmental functions. Circular A-76 outlines procedures for determining whether

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a cost comparison to determine if it would be more economically advantageous to resolicit for the requirement or to exercise the option in Satellite's contract.

In its reconsideration request, Satellite again argues that the Coast Guard cannot resolicit for the requirement without first conducting a cost comparison. Specifically, Satellite argues that under the original A-76 solicitation, the option periods were included in the cost comparison and, therefore, "[t]he Coast Guard must exercise its option unless there is a material change in the procurement needs, or it is to the economic advantage of the government." According to Satellite, agency needs have not changed.

Satellite also asserts that our dismissal is inconsistent with Diebold v. United States, 947 F.2d 787 (6th Cir. 1991).

In Diebold, the court of appeals found that contracting out decisions under OMB Circular A-76 are not solely within agency discretion but are subject to judicial review. Satellite interprets Diebold to mean that the agency does not, under the circumstances here, have the discretion to resolicit rather than to exercise a contract option and that the agency's decision not to exercise Satellite's contract option is subject to our review.

First, as to Satellite's argument that the Coast Guard must exercise its option unless there is a material change in agency needs or in the cost of the services, we point out that an option, by definition, is a "unilateral right" of the government to elect to purchase additional supplies or services or to extend the term of the contract. Federal Acquisition Regulation (FAR) § 17.201. There is no requirement that an agency exercise an option simply because the cost of the option was evaluated in the award process. California Shorthand Reporting, *supra*. Therefore, the fact that agency needs have not changed is irrelevant.

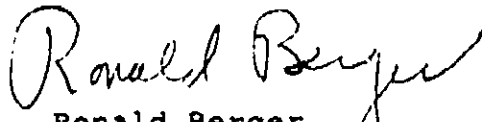
As to the applicability of Diebold to the situation here, we note that there is no mention of options or the exercise of options versus recompetition in Diebold. Diebold, insofar as it is relevant here, stands for the limited proposition that an agency's cost comparison, conducted to determine whether to perform needed services in-house or to contract

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commercial activities should be operated under contract by private enterprise or in-house using government facilities and personnel. Specifically, it sets out a process for comparing the costs of contracting-out and in-house performance.

out for them, is controlled by laws and regulations and is subject to judicial review. It says nothing about agency decisions, made subsequent to a contracting out decision and the award of a contract, as to whether continued contracting with the private sector should be through the exercise of an option in the awarded contract or through a new competition and contract award.

We find no error of fact or law in our prior dismissal. Accordingly, the dismissal is affirmed.


Ronald Berger
Associate General Counsel